

HOUSE BILL 3303
By Whitson

AN ACT relative to the appointment of a purchasing agent for Unicoi County, and to amend Chapter 678 of the Private Acts of 1949.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The county executive of Unicoi County shall appoint, with the approval of the county legislative body, a purchasing agent for Unicoi County. The purchasing agent shall be for all purposes an employee of Unicoi County. The purchasing agent shall be qualified by training and experience to perform the purchasing agent's duties in a proficient manner in accordance with generally recognized principles of governmental purchasing and in accordance with the provisions of this act.

SECTION 2. Before assuming his or her duties, the purchasing agent shall execute a corporate surety bond in an amount established by the county executive at not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000). The bond shall be approved by the county legislative body and shall be recorded in the office of the register of deeds in the same manner as bonds of county officials. The premium for the bond shall be paid from the county general fund.

SECTION 3. The compensation of the purchasing agent and the other necessary expenses of the office, including any necessary clerks and assistants, shall be provided for by annual appropriation of the county legislative body from the county general fund. The purchasing agent shall have the authority to appoint and remove clerks and assistants, prescribe their duties, and fix their salaries, within the limits of any annual appropriation made

therefor. The purchasing office shall be open for business during the usual hours observed by other county government offices.

SECTION 4. The purchasing agent shall have exclusive power and authority to contract for and purchase all materials, supplies, equipment, and contractual services required by every official, agent, servant, department, or agency of, or under the control of, the Unicoi County government and which expends or encumbers any of the county's funds, and to arrange for the rental of machinery, buildings or equipment where the rents are to be paid out of funds belonging to or under the control of Unicoi County or any department, institution or agency thereof. No other official, employee or agent of the county or of any of its departments or agencies shall be authorized to contract for or purchase any such materials, supplies, equipment or contractual services. The purchasing agent shall contract for professional services in accordance with Tennessee Code Annotated, Section 12-4-106, under the direction of the department or official requiring such services, and such department or official shall make the final determination as to whom the contract shall be awarded.

SECTION 5. (a) The purchasing agent shall develop rules and regulations for the purchase of supplies, materials, equipment and contractual services, to accomplish the following purposes:

(1) Authorizing departments, officials or agencies of the county to make purchases in the open market for immediate delivery in emergency situations, defining emergencies and describing the manner in which such emergency purchases shall be made and promptly afterward reported to the county purchasing agent;

(2) Prescribing the manner in which supplies, materials and equipment shall be requisitioned, purchased, delivered, stored and distributed;

(3) Prescribing the dates for submitting requisitions and estimates, the future period they are to cover, the form in which they are to be submitted, the manner of their authentication, and their revision by the county purchasing agent;

(4) Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and of making or procuring chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(5) Requiring periodic and special reports by county departments, agencies, and employees of stocks of surplus, unusable or obsolete supplies and equipment on hand and prescribing the form of such reports;

(6) Providing for the transfer to or between county departments and agencies of supplies and equipment on hand, which are surplus with one department or agency, but which may be needed by another or others, and for the disposal by sale, after receipt of competitive bids, of supplies, materials and equipment which are obsolete or unusable;

(7) Determining whether a deposit or bond is to be submitted with a bid on a contract for purchase or sale, and if required, prescribing the amount and form thereof, and providing that such surety shall be forfeited if the successful bidder refuses to enter into contract ten (10) days after the award;

(8) Prescribing the manner in which invoices for supplies, materials, equipment and contractual services delivered to any and all departments, agencies and offices of the county shall be submitted, examined and approved;

(9) Prescribing the manner in which records are to be kept;

(10) Providing for all other such matters as may be necessary to give effect to the foregoing rules and the provisions of this act, and any other applicable laws regarding governmental purchasing.

(b) The rules and regulations developed by the purchasing agent shall be submitted to the county legislative body and shall take effect upon being adopted by the county legislative body.

SECTION 6. Purchases made on behalf of the Unicoi County Board of Education shall be made by the purchasing agent in accordance with the requirements of Tennessee Code

Annotated, Title 49. Purchases made on behalf of the Unicoi County Highway Department shall be made by the purchasing agent in accordance with the requirements of the County Uniform Highway Law, Tennessee Code Annotated, Title 54, Chapter 7.

SECTION 7. (a) Purchases or contracts for the purchase of supplies, materials, equipment, or contractual services, and all contracts for the lease or rental of equipment, with an estimated value of five thousand dollars (\$5,000) or more shall, except in cases of emergency or as otherwise hereinafter provided, be executed by the purchasing agent only after he or she shall have advertised in a newspaper of general circulation published in Unicoi County that sealed bids will be received by the purchasing agent at the time fixed in the advertisement, which time shall not be less than five (5) days after the publication of the advertisement. The sealed bids shall be opened publicly at the place, hour and date advertised. Bids received after the hour designated for opening of bids will not be considered. Tabulations of bids will be effected as promptly as possible and awards will be made to the lowest and best responsible bidder or bidders. The purchasing agent shall, in all matters, have the right to reject any or all bids in whole or in part, and may waive technical defects in bids received. When two or more bids are submitted at the same price on the same character, kind and quality of supplies, material or equipment to be purchased, the purchasing agent in his or her discretion may award the contract or contracts to either of such bidders, or may apportion the requirements between or among the bidders, or may elect to reject all such bids and advertise for additional bids.

(b) Purchases costing less than five thousand dollars (\$5,000) may be made by the purchasing agent in the open market without newspaper notice, but shall whenever possible be based upon at least three (3) competitive bids.

(c) Notwithstanding the provision requiring all purchases and contracts be made by the purchasing agent, when the estimated value of such materials, supplies or equipment is two thousand dollars (\$2,000) or less, the purchasing agent may adopt a written procedure or policy to allow any department head or official of the county to make purchases or let contracts with

the prior approval of the purchasing agent to make the purchase. In making such purchases, the purchasing officials and department heads under the authority of this paragraph shall be diligent in securing the lowest price possible; and in no instance shall any supplies, materials or equipment purchased under the authority of this paragraph be purchased at a higher price than the prevailing current market for such supplies, materials or equipment.

(d) Contracts for legal services, auditing services by certified public accountants, and similar services by professional persons or groups of high ethical standards shall not be based upon competitive bids but shall be awarded on the basis of recognized competence and integrity. This prohibition against competitive bidding shall not prohibit the county from interviewing eligible persons or groups to determine the capabilities of such persons or groups, or from considering price as a factor in the selection process.

(e) Bids need not be required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices.

(f) The county may purchase materials, supplies, commodities and equipment from any federal, state or local governmental unit or agency, without conforming to the competitive bidding requirements of this part.

(g) The county purchasing agent may authorize any department or agency of the county government to purchase in the open market, without filing requisition or estimate, any supplies, materials or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs. Such direct emergency purchases, however, may be made by department or agency heads only at times when the office of the county purchasing agent is closed. At all other times, only the county purchasing agent shall make these purchases. Emergency purchases shall, whenever possible, be based on at least three (3) competitive bids. A report of such emergency purchase, when made by a department or agency head, together with a record of the competitive bids secured and upon which it was based, shall be submitted

in writing to the county purchasing agent before the close of the next working day following the date of such purchase, by the head of the county department or agency concerned, together with a full and complete account of the circumstances of such emergency. Such report shall be kept on file and shall be open to public inspection.

SECTION 8. All contracts shall be approved as to form by the county attorney, and the original copy of each long-term contract shall be filed with the county clerk.

SECTION 9. No purchase shall be made or purchase order or contract of purchase issued but in consequence of a written requisition for the supplies, materials, equipment or contractual services required, which requisition shall be signed by the head of the department, office or agency of the county requiring such articles or services, except in cases of emergency as herein provided. Original copies of all such requisitions shall be kept on file in the office of the county purchasing agent.

SECTION 10. No purchase shall be made or purchase order or contract of purchase issued for tangible personal property or services from any firm or individual whose business tax or license is delinquent.

SECTION 11. The county purchasing agent is authorized to purchase and contract to purchase materials, supplies, equipment and contractual services on a fiscal year basis, but no commitment shall be made which extends beyond the end of the current fiscal year for which appropriations have been made by the county legislative body, except such commitments as are authorized by resolution of the county legislative body.

SECTION 12. In the determination of the county's annual needs of certain commodities and/or services, the county purchasing agent may request the various departments, offices and agencies of the county government to anticipate their needs for the remainder of the fiscal year and to issue their requisitions based upon such estimates.

SECTION 13. Perishable commodities, at the election of the county legislative body, may be exempted from the requirements of public advertisements and competitive bidding when such items are purchased in the open market. A record of all such purchases shall be made by

the purchasing agent and shall specify the amount paid, the items purchased, and from whom the purchase was made.

SECTION 14. Each purchase order or contract issued or executed pursuant to the provisions of this act shall be evidenced by a written order signed by the county purchasing agent, which shall give all significant details respecting such order or contract.

SECTION 15. Neither the county purchasing agent, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government. Nor shall any such persons accept or receive, directly or indirectly, from any person, firm or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value, or any promise, obligation or contract for future reward or compensation.

SECTION 16. Chapter 678 of the Private Acts of 1949, and any other acts amendatory thereto, is amended by deleting Section 7 in its entirety and by substituting instead the following:

All purchases of supplies, equipment or material for the county highway department shall be made through the county purchasing agent in accordance with applicable law.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Unicoi County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified to the secretary of state.

SECTION 19. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 18.